

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

William L. Zawila
Permittee of FM Station
KNGS, Coalinga, California

Avenal Educational Services, Inc.
Permittee of FM Station
KAAX, Avenal, California

Central Valley Educational Services, Inc.
Permittee of FM Station
KYAF, Firebaugh, California

H.L. Charles D/B/A Ford City Broadcasting
Permittee of FM Station
KZPE, Ford City, California

Linda Ware D/B/A Lindsay Broadcasting
Licensee of FM Station
KZPO, Lindsay, California

DOCKET FILE COPY ORIGINAL

EB Docket No. 03-152

Facility ID No. 72672

Facility ID No. 3365

Facility ID No. 9993

Facility ID No. 22030

Facility ID No. 37725

File BR-19970804YJ

DATE OF HEARING: March 29, 2016 **VOLUME:** 1

PLACE OF HEARING: WASHINGTON, D.C. **PAGES:** 1-82

NEAL R. GROSS & CO., INC.
1323 RHODE ISLAND AVENUE, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:	: EB Docket No.
	: 03-152
	:
WILLIAM L. ZAWILA	: Facility ID No.
	: 72672
Permittee of FM Station	:
KNKS, Coalinga, California	:
	:
AVENAL EDUCATIONAL SERVICES, INC.	: Facility ID No.
	: 3365
	:
Permittee of FM Station	:
KAAX, Avenal, California	:
	:
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.	: Facility ID No.
	: 9993
	:
Permittee of FM Station	:
KYAF, Firebaugh, California	:
	:
H.L. CHARLES D/B/A FORD CITY BROADCASTING	: Facility ID No.
	: 22030
	:
Permittee of FM Station	:
KZPE, Ford City, California	:
	:
LINDA WARE D/B/A LINDSAY BROADCASTING	: Facility ID No.
	: 37725
	:
Licensee of FM Station	: File BR-19970804YJ
KZPO, Lindsay, California	:
	:
	:

Tuesday,
March 29, 2016

Washington, D.C.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

APPEARANCES:On Behalf of the Federal Communications Commission:

PAMELA S. KANE, ESQ.
MICHAEL ENGEL, ESQ.
of: FCC Enforcement Bureau
445 12th Street, S.W.
Washington, D.C. 20554
202-418-2393

On Behalf of the Permittees:

MICHAEL COUZENS, ESQ.
of: Michael Couzens Attorney At Law
P.O. Box 3642
Oakland, California 94609
510-652-0512

ALSO PRESENT:

RACHEL B. FUNK
Attorney Advisor for the FCC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P-R-O-C-E-E-D-I-N-G-S

9:31 a.m.

JUDGE SIPPEL: Let's go on the record. This is a pre-hearing conference in the case of Zawila et al. for some public educational facilities someplace out in California.

I'm going to ask, I'm going to ask Mr. Couzens if he'd please note his apparent.

MR. COUZENS: Michael Couzens appearing for Avenal Education Services, Incorporated, and for Central Valley Educational Services, Incorporated. And my name is spelled C-O-U-Z-E-N-S.

JUDGE SIPPEL: Yes, you can give the reporter your business card. That would be very helpful.

MR. COUZENS: I'll do that.

JUDGE SIPPEL: And for the Bureau?

MS. KANE: Good morning, your Honor. My name is Pamela Kane. I'm here on behalf of the Enforcement Bureau. And with me is my colleague.

MR. ENGEL: Michael Engel, your Honor. Good morning.

JUDGE SIPPEL: Good morning, Mr. Engel.

MR. ENGEL: Good to see you, your Honor.

JUDGE SIPPEL: I'm not going to call you Mr. Angel today. That's endearment for Engel. That's a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 different story.

2 And in the back, do you want to identify
3 yourselves? I mean, you're welcome to be here.

4 MR. SMITH: Yes, your Honor. Tony Smith, senior
5 counsel, Audit Division of the Bureau.

6 JUDGE SIPPEL: Okay.

7 MR. SANGUINIS: And Alexander Sanguinis,
8 attorney at the Audit Division.

9 JUDGE SIPPEL: Okay, fine, fine. This is a
10 public hearing, so really it's not necessary to take your
11 identification, but it just makes it more comfortable for
12 everybody, including myself, to know who's here.

13 We had a development yesterday, at least from my
14 side of the table we did. We learned that Mr. Zawila was
15 not going to be with us, and that's not a good development.
16 Technically, I'm considering Mr. Zawila to be in default.
17 The question is where do we go from there because Mr.
18 Zawila, according to your papers, has some very important
19 documents, very relevant documents; is that correct, Mr.
20 Couzens?

21 MR. COUZENS: I believe so, yes.

22 JUDGE SIPPEL: Yes. So we have to keep him as a
23 party, so he'll be subject to, yes, he'll be subject to, of
24 course, discovery, and it's easier to get discovery from a
25 party than it is from a non-party because you've got to go

1 through subpoenas and all that kind of stuff, which,
2 ultimately, you may have to do for him anyway since he's
3 reluctant to turn anything over.

4 Have you had any success in that? I mean,
5 what's your relationship with Mr. Zawila?

6 MR. COUZENS: Well, that's hard to say.
7 Initially, I thought that I could communicate with him,
8 but, as time went by, I realized that nothing that he said
9 was ever consistent from one day to the next. So that's
10 when I decided to make this demand on him to produce client
11 files, and he refused and denied that we were ever clients
12 of his.

13 To me, the priority here would be for, you know,
14 it's up to the Enforcement Bureau to run its case, but, to
15 me, the priority would be for the Enforcement Bureau to try
16 really hard to get such documents as they demanded and see
17 what happens from there.

18 JUDGE SIPPEL: But you would have a right to go
19 through the same discovery procedures as the Bureau does.
20 I mean, you can serve requests for documents and you can
21 specify exactly what the documents are --

22 MR. COUZENS: Well, that's not a bad idea.

23 JUDGE SIPPEL: And if you feel that a subpoena,
24 after making that attempt, a subpoena would be more helpful
25 or would actually be essential, I'd be glad to issue a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 subpoena so they can be subpoenaed. I mean, there's ways
2 of getting things. I believe that certainly, unless he
3 does -- no, never mind. Unless he does something, forget
4 about that.

5 So let's give this a try. I don't know, I'm
6 thinking the Bureau, could, in a sense, you know, kind of
7 double-team him. Since you know pretty much or you'll see
8 what the documents are, I guess you can identify some of
9 these documents, you can describe what they are.

10 MR. ENGEL: Your Honor, may I be heard?

11 JUDGE SIPPEL: Yes, sir.

12 MR. ENGEL: Mr. Zawila has not complied with
13 nearly every discovery request. I'm cutting to the chase.
14 I was going to get to this later, your Honor, but, since
15 you mentioned default, we have an alternative solution,
16 your Honor. We're prepared today to move for negative
17 inferences. We have received, either from - Avenal or
18 Central Valley is represented by Mr. Zawila or Avenal or
19 Central Valley is represented by Mr. Couzens. We've
20 received no responses to our first set of interrogatories.
21 We've received very limited responses throughout the whole
22 discovery process, your Honor. We had a motion, a proposed
23 order for the Court, your Honor, for negative findings of
24 fact, and the rules 1.323(d) provides for, provides your
25 Honor with the authority to issue those negative findings,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and you have indicated in prior orders that you would
2 consider that. So we are prepared today to make that
3 motion, your Honor.

4 JUDGE SIPPEL: All right. Well, you're a little
5 bit ahead of me, but, yes, I was going to turn to that
6 eventually, but that's okay. You turned the page for me.

7 MR. ENGEL: Thank you, your Honor.

8 JUDGE SIPPEL: Sure. We'll give you most
9 anything that's reasonable in that regard. But we still
10 are stuck with a problem here of getting the actual
11 documents. So the inferences, it's all well and good, but
12 Mr. Couzens wants the documents, and I want the documents
13 probably as much as Mr. Couzens does because documents say
14 a lot more than inferences do.

15 But, yes, I was going to, I mean, I guess I can
16 get into that now that what I would have in mind is that
17 you would take each of these facts that are significant.
18 You don't have to every single fact, the facts in your
19 request for admissions I thought are significant and put in
20 the form of an order to consider them admitted by virtue of
21 the default or however you want to phrase that and in the
22 form of an order, and that would be very helpful to me.
23 And if it's reasonable and I give Mr. Zawila a little time
24 to respond to it, eventually it will get issued, I'm sure,
25 because he's not here. To me, there's only one more mortal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sin you can commit, maybe there's a couple more, but this
2 is one of them in here. When you don't show up, that's
3 bad.

4 But, again, he's still part of us. He's still
5 part of the case because we need him for purposes of
6 discovery, I feel.

7 So where do we go from here now? That's the
8 question. Now, you have indicated, Mr. Couzens, that you
9 are now prepared to turn over discovery to the Bureau.
10 Let's forget about the past now. What are we ready to do
11 for the present now?

12 MR. COUZENS: Well, your Honor, let me put it
13 this way: we were reluctant to make the investment in
14 discovery while a death sentence was hanging over these
15 applicants or --

16 JUDGE SIPPEL: And what would that be, the death
17 sentence?

18 MR. COUZENS: That would be the holding that,
19 because they didn't have their articles in being at the
20 inception, they were disqualified and had to be dismissed.
21 If that were the Court's ruling, why would we do any --

22 JUDGE SIPPEL: Why would you engage in --

23 MR. COUZENS: We'd just give up and move on or
24 take our appeal or whatever. That was our approach.

25 JUDGE SIPPEL: That's a good answer, but the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question and what you wrote in your papers give me some
2 hesitation or a cause to reflect. You said that there is a
3 provision out in California where you can be non-
4 incorporated but still be recognized as doing business as
5 an unincorporated association, or whatever term you want to
6 give it, under California law.

7 MR. COUZENS: That's true.

8 JUDGE SIPPEL: And were you aware of that?

9 MR. ENGEL: Yes, your Honor. We believe that
10 you've touched on a threshold issue, and that issue is
11 standing, your Honor. Mr. Couzens' clients, your Honor, as
12 Mr. Couzens explained this week, his clients at the time of
13 the application were purportedly unincorporated
14 associations. However, the applications were filed by
15 incorporated entities, and they're indicated at least twice
16 on those applications that they're incorporated entities.

17 Mr. Couzens' clients, Avenal and Central Valley,
18 by virtue of documents provided only by Mr. Zawila, were
19 incorporated in 1999 and 2001. That's Avenal and Central
20 Valley. However, the applications were filed in 1989 and
21 '88 respectively.

22 In other words, your Honor, Mr. Couzens' clients
23 weren't even in existence when these applications were
24 filed. Therefore, they lack standing to be in this
25 proceeding, your Honor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE SIPPEL: Okay. So there was never any
2 filing with the California authorities for any kind of a
3 form of doing business?

4 MR. ENGEL: Well, your Honor, if they were
5 unincorporated associations, I'm not a California barred
6 attorney, but a cursory research on the California
7 Secretary of State website reveals that there are
8 registration forms for unincorporated associations. It's a
9 legal term of art in California, your Honor. Mr. Couzens'
10 pleading didn't include any -- and I don't mean to
11 criticize Mr. Couzens, because I have to identify the
12 counsel because it didn't provide any documentation for
13 that assertion, but I take it at face value that they were
14 an unincorporated association. That's fine, but the entity
15 that filed the permit applications, your Honor, said
16 incorporated clearly and it checked the box that they were
17 incorporated entity. So Mr. Couzens' clients could not
18 have possibly have been the parties that filed those
19 applications.

20 JUDGE SIPPEL: All right. But before getting
21 even to that point, my understanding of how this works, an
22 unincorporated association can do business as such, I guess
23 probably if it's not profit-making, whatever the conditions
24 might be, but you still have to file something. You have
25 to file permission or requests to do business as an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unincorporated association, DBA whatever it might be. And
2 until you do that, you're really not, you're not a legal
3 entity under the law of California, at least for purposes
4 of recognizing certain rights and interests. Am I correct
5 on that?

6 MR. COUZENS: No, I would disagree with that,
7 your Honor.

8 JUDGE SIPPEL: Okay. Tell me how it goes.

9 MR. COUZENS: The entity is recognized even if
10 there's no registration. And, remember, we're talking
11 about a period of time from the initial application filing
12 to the time that the entity incorporated.

13 JUDGE SIPPEL: Well, give us those dates again.

14 MR. COUZENS: There was a protracted period. I
15 think it was six or seven years.

16 JUDGE SIPPEL: Okay.

17 MR. COUZENS: But, nevertheless, the entity made
18 application, they responded to inquiries from the staff.
19 The staff knew the composition, except for the fact that a
20 check that said incorporated when it was not. That became
21 true later.

22 The only question here is the timeliness of the
23 incorporation because, clearly, they're incorporated now.
24 And what the Bureau has sought to do here is go back in
25 time and apply precedence that evolved in Low Power FM to

1 this service to say they needed to be incorporated on the
2 day they filed the application.

3 JUDGE SIPPEL: That's what I was led to believe.

4 MR. COUZENS: That's their argument. Their
5 argument is not right. Why would you have to pull those
6 precedents over from LPFM to make that point? And those
7 precedents occurred years later. In fact, Low Power FM
8 didn't even exist at the time that these applications were
9 filed.

10 JUDGE SIPPEL: So LPFM was after the fact. I
11 try and get to the nub of this, though. Are you saying
12 that those staff, whoever the staff was at that time, were
13 well aware of what was being filed in the sense that, well,
14 if you checked off the box that it was incorporated -- I
15 don't mean you personally, but if the box was checked that
16 was incorporated and the application was filed, why should
17 anybody go beyond what was checked off at that point to
18 test the verity of that or --

19 MR. COUZENS: Well, there were staff inquiries
20 as to the non-commercial purpose, and those were responded
21 to.

22 JUDGE SIPPEL: But when -- okay. That was
23 during that period of time before incorporation was
24 actually completed?

25 MR. COUZENS: Right.

1 JUDGE SIPPEL: Okay. So they were inquiries?

2 MR. COUZENS: Right.

3 JUDGE SIPPEL: And did -- we don't know whether
4 that subject came up at all about the status of the --
5 since it was, again, the box was checked off, and, if I
6 were a staff attorney or whatnot working with that kind of
7 a situation, I'd be thinking all along, well, this place,
8 this company is incorporated, I just want to know what
9 their purpose is, what their general purpose is, and all
10 that. I wouldn't pay attention to that until red flag came
11 up.

12 MR. COUZENS: Let's back up a step or two.

13 JUDGE SIPPEL: Good.

14 MR. COUZENS: Suppose, suppose the filing were
15 made as an unincorporated association with no claim to be
16 incorporated. Could they then be normally processed and
17 receive a construction permit?

18 MS. KANE: Your Honor, we're happy to answer
19 that question because there's case law specific to that
20 question. That is in the NCE non-LPFM criteria. I'm happy
21 to hand that case to you, but we have cited it in our
22 briefs, which is the Hammock Environmental case. It's
23 precisely that --

24 JUDGE SIPPEL: I think I have it somewhere.

25 MS. KANE: It's precisely that situation, your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Honor, where it was an NCE station, an NCE applicant --

2 JUDGE SIPPEL: When you say -- wait a minute.

3 Watch out with those abbreviations. What are you talking
4 about an NT?

5 MS. KANE: NCE, a non-commercial educational
6 station, which is the kind of station that Avenal and
7 Central Valley have both filed applications for.

8 JUDGE SIPPEL: So it's NC; is that right?

9 MS. KANE: NCE.

10 JUDGE SIPPEL: Non-commercial --

11 MR. ENGEL: November Charlie Echo.

12 JUDGE SIPPEL: Well, why didn't you say it that
13 way?

14 MS. KANE: I'm not from the military, your
15 Honor.

16 JUDGE SIPPEL: Well, this is not military. This
17 goes back to the Morse code.

18 MS. KANE: These were the specific rules in play
19 for non-commercial educational stations. And the
20 applications that were made by Avenal and Central Valley,
21 whether they designated themselves as incorporated or
22 unincorporated at the time, have certain requirements to
23 meet as to whether or not they were an organized entity.

24 We've never said that they needed to be an
25 incorporated entity. The rules don't require that you be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 an incorporated entity. The reason we've said that they
2 needed to be incorporated at the time of their application
3 is because they indicated they were incorporated when they
4 filed their application, and they used the initials "INC."
5 They checked the box on their application that says they
6 were an incorporated entity. There is on the application
7 a place for them to have checked if they were an
8 unincorporated association and to explain what that type of
9 association was because the Commission requires that you
10 identify the purpose of your station and whether you're
11 going to be non-profit and whether you're going to be using
12 it for non-commercial educational purposes. That's the
13 requirement.

14 When they filed the application, they checked
15 corporate entity. So in our papers, we've been saying
16 that, at that time, they needed to have been incorporated
17 because the Hammock case requires that that determination
18 be made at the time that the Media Bureau is determining
19 this.

20 JUDGE SIPPEL: Well, hold on now. Let's take
21 the situation in its reality, though. Let's say some
22 mistake was made, an honest mistake was made or an innocent
23 mistake was made, and they checked off the wrong box. But
24 they did everything to comply with the request for further
25 information that the Bureau was making.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KANE: Well, the Bureau wouldn't be, the
2 Licensing Bureau wouldn't have, at the time, asked them for
3 additional information about their organized status.

4 JUDGE SIPPEL: No, I understand that. I already
5 covered that. I already covered that. We're saying that,
6 from the standpoint of Avenal -- well, let me ask this
7 question.

8 MS. KANE: If, in fact, they were an
9 unincorporated association, your Honor, the Hammock case
10 requires them to have provided information and to provide
11 it now. This unincorporated association argument, your
12 Honor, as you know from many pleadings on this since last
13 May when you first asked these parties to identify their
14 corporate status, this is the first time we've ever heard
15 that that's what they claimed they were at that time. All
16 this time, they have been silent on the question of whether
17 they were an unincorporated association or whether they
18 said they were incorporated before they were.

19 So this unincorporated is an 11th hour argument.
20 But even saying that, yes, in fact, they were an
21 unincorporated association, under the Hammock case, the
22 Commission would then say to them, well, then you need to
23 provide information that identifies the steps that you took
24 to be recognized by the State of California as an
25 unorganized association and to establish that you had a

1 legal entity prior to the timing of the application. We've
2 asked for those very types of documents in our document
3 requests to these companies, your Honor, as to what their
4 positions were, what their corporate status was, what their
5 governing status was. We've received nothing. And if you
6 note, nothing was attached to the most recent filing for
7 Mr. Couzens on behalf of Avenal and Central Valley.

8 JUDGE SIPPEL: Yes, I'm following you on all
9 that, but I want to know was the date that the paper was
10 filed, the first paper was filed by the FCC which checked
11 off the box saying it was incorporated --

12 MS. KANE: You mean by Avenal and Central
13 Valley?

14 JUDGE SIPPEL: Yes, we're only talking about
15 those two, right? Is that correct?

16 MS. KANE: Yes.

17 JUDGE SIPPEL: All right. So what was that date
18 again?

19 MR. ENGEL: 1989 for Avenal, 1988 for Central
20 Valley.

21 JUDGE SIPPEL: '88 and '89. Okay. Who was
22 representing Avenal and Central Valley at that time?

23 MS. KANE: It is our understanding, your Honor,
24 that it was Mr. Zawila.

25 JUDGE SIPPEL: Mr. Zawila.

1 MS. KANE: Correct.

2 JUDGE SIPPEL: And that's only an understanding.
3 Nobody really knows that?

4 MR. ENGEL: His name is on the form, your Honor.

5 MS. KANE: He filed, he filed reports.

6 JUDGE SIPPEL: Well, okay. We got that, so
7 we've got that established.

8 MR. COUZENS: Yes, we do.

9 JUDGE SIPPEL: And so then when you come into
10 the picture, and what's Mr. White's role in this, if I have
11 it right?

12 MR. COUZENS: I came into the picture, your
13 Honor, about two years ago when the case went out of
14 hibernation and things started happening again.

15 JUDGE SIPPEL: You mean when Sippel arrives on
16 the horizon? Okay. Yes, okay.

17 MR. COUZENS: And Mr. White was the original
18 applicant. He put these things together. He talked to
19 Zawila. He knew about the availability of channels, and
20 Zawila filed in his behalf. Now, there were a number of
21 funky things about the filing, believe me.

22 JUDGE SIPPEL: That's okay. I don't want to get
23 into that right now. But the idea was that Zawila was the
24 lawyer. He's licensed in California.

25 MR. COUZENS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE SIPPEL: But he got -- and so White went
2 to him. Now, Zawila is representing in this latest
3 pleading that he's doing this on the cuff, this is all pro
4 bono work for him. I don't know anything about that.

5 MR. COUZENS: The current defense that he's
6 mounting.

7 JUDGE SIPPEL: Well, his current position is he
8 can't afford to get here, even though this is the best
9 season in the world to come to Washington because of the
10 cherry blossoms.

11 MR. COUZENS: Yes, the cherry blossoms are on
12 their way.

13 JUDGE SIPPEL: I would take a second mortgage to
14 come out here and then write that off as a business
15 expense. But, anyway, he chose not to do that.

16 So Zawila was the lawyer that filed this thing.
17 We can presume that because his name is on it.

18 MR. COUZENS: I think that's stipulated.

19 JUDGE SIPPEL: Has it been stipulated?

20 MS. KANE: He has signed the applications, your
21 Honor.

22 JUDGE SIPPEL: So there's two people that know
23 about this. You don't know about this. There's two people
24 that know about this, and that is Zawila and Mr. White.

25 MR. COUZENS: Correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE SIPPEL: Now, has anything been done to
2 take their depositions?

3 MS. KANE: Your Honor, we've taken a lot of,
4 we've asked for a lot of discovery with --

5 JUDGE SIPPEL: No, my question is has there been
6 a thought about deposing them?

7 MR. COUZENS: Can I speak to that, your Honor?

8 JUDGE SIPPEL: Well, wait a minute. One at a
9 time.

10 MS. KANE: There has, but we obviously, before
11 we would incur the expense on behalf of the public, incur
12 the expense to go and take these depositions, we wanted to
13 obtain even the most basic discovery from these parties.
14 We've gotten nothing from Mr. Zawila, and Mr. Couzens
15 represents Mr. White. In fact, many of the responses that
16 we've gotten are on behalf of Mr. White and, yet, we've got
17 no substantive responses from Mr. Couzens.

18 JUDGE SIPPEL: Well, Mr. Couzens --

19 MR. COUZENS: I disagree.

20 JUDGE SIPPEL: I go first because I should go
21 first. All that's well and good, but Mr. Couzens has now
22 filed a pleading representing that he's going to cooperate
23 with discovery. Generally, as a general statement, I'm
24 making that representation for him.

25 MR. COUZENS: Thank you.

1 JUDGE SIPPEL: So what's the problem? I mean,
2 you're going to get this stuff, as much as you can get.
3 But you can still notice this guy for deposition. You
4 don't want him leaving the country on you.

5 MS. KANE: Well, your Honor --

6 JUDGE SIPPEL: And why two?

7 MR. ENGEL: We think after today it will be
8 pointless, your Honor. Based on the motion we're going to
9 make today, I think that we need not engage Mr. Zawila
10 again after today.

11 JUDGE SIPPEL: For fact-finding purposes, not
12 for any other purpose.

13 MR. ENGEL: Correct, your Honor.

14 JUDGE SIPPEL: Somebody has got to know
15 something about what happened back in 1988 and '89 that can
16 tell us about it. We can surmise what it was. We don't
17 know what the frame of --

18 MS. KANE: Your Honor, the documents speak for
19 themselves.

20 JUDGE SIPPEL: Well, they should.

21 MS. KANE: If, in fact, they were an
22 incorporated entity, there should have been documents that
23 indicated they were incorporated. As we know, there isn't
24 anything in the California records that indicates any
25 incorporation until many years later.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 If they were an unincorporated association and
2 had a separate legal entity, there should be, again,
3 documents reflecting the existence of that legal entity.
4 The burden is on them at this point, your Honor, not on the
5 Bureau, to prove this. The applications say what it says.
6 The application says they represented themselves to this
7 commission as an incorporated entity, and, yet, they were
8 not incorporated until many years later. By virtue of our
9 rules, they were not a qualified applicant at the time.

10 JUDGE SIPPEL: Well, the Bureau also has an
11 obligation to assist me in making a clear record, and
12 you're assisting the Commission in making a clear record.
13 And this is an unclear record, and Mr. Couzens is right
14 that this is a death knell. I mean, to make a decision
15 that's a death knell kind of a decision, you know, I could
16 put on some kind of a black thing here, I just want more
17 information. I want to find out what the facts really are.

18 You know, this is a non-educational effort,
19 right? It's an NCE effort.

20 MS. KANE: Correct.

21 JUDGE SIPPEL: There's no money in this, so this
22 is not a money scheme. Somebody has got an interest in
23 doing something for the public benefit, I'm assuming. And
24 I don't want to just cut them off at the pass without
25 knowing what the hell happened. That's all.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. KANE: Your Honor, they should have
2 documents. We've asked --

3 JUDGE SIPPEL: They should have, but they don't
4 --

5 MS. KANE: But they haven't produced any.

6 JUDGE SIPPEL: Well, Zawila, put Zawila aside
7 because we're going to get to Zawila through the deposition
8 process. You get him on the record and you start pushing
9 him for documents, and then I can put more pressure on
10 them. I don't know why they won't let me hold people in
11 contempt. They won't do that. And, certainly, he'll be at
12 that deposition. I mean, I'm just trying to do everything
13 we possibly can to get this fundamental information.

14 See, what I want to know is what was the state
15 of mind of the organizers of Avenal and Central Valley when
16 this thing got started. I mean, they might have just, they
17 might have been fat, dumb, and happy.

18 MR. ENGEL: Your Honor, there's an easy solution
19 to that, your Honor.

20 JUDGE SIPPEL: Yes, sir.

21 MR. ENGEL: We served request for admission. We
22 received no response -- on the five parties. We received
23 no timely responses. Under the rules, if they miss the
24 deadline, they shall be deemed admitted. The word "shall"
25 is in the words, your Honor. All those requests for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 admission are deemed admitted, your Honor. Mr. Zawila, as
2 the party that was on the case during the application
3 process, those requests for admission he has knowledge of
4 and they're deemed admitted, your Honor.

5 JUDGE SIPPEL: Well, you're holding that against
6 Mr. Couzens and --

7 MR. ENGEL: Well, we can hold it against Mr.
8 Couzens' clients, your Honor, not against Mr. Couzens. I
9 think for the first time this morning, your Honor, we
10 received a request for admission response on behalf of
11 Central Valley only. There's another client, Avenal. We
12 still haven't received any request for admission on behalf
13 of those parties.

14 So this sort of bolsters the motion that we want
15 to make regarding negative inferences, your Honor, that all
16 those requests for admission are deemed admitted. We've
17 received no responses whatsoever from any party in this
18 proceeding to the first set of interrogatories, your Honor.
19 And there's a 2003 set of requests for admissions that
20 nobody has responded to, as well. I'm quite sure this
21 request for admissions doesn't address the 2003 request for
22 admissions, your Honor. Remember, we're on the second set
23 of request for admissions.

24 JUDGE SIPPEL: I realize that. We've got
25 requests --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701